

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket No. 93-253

COMMENTS OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

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- A "Designing the PCS Auction" by Barry J. Nalebuff and Jeremy I. Bulow
- B Curriculum Vitae of Professor Barry J. Nalebuff
- C Curriculum Vitae of Professor Jeremy I. Bulow

EXECUTIVE SUMMARY

The Commission has sought comment regarding its implementation of new Section 309(j) of the Communications Act, which for the first time gives the Commission the express authority to employ competitive bidding procedures to choose from among two or more mutually exclusive, accepted applications for initial licenses, provided that the service is principally one in which the spectrum is used to provide service to subscribers for compensation. Bell Atlantic's comments are intended to be useful to the Commission in considering its broad design criteria for conducting spectrum auctions for all services, but are focused primarily on the implementation of the auction rules with respect to PCS in light of the very short time frames mandated in the Budget Act for implementation of competitive bidding authority and initiation of PCS licensing.

Bell Atlantic's Comments track generally the issues raised in the Commission's Notice of Proposed Rule Making. First, Bell Atlantic strongly urges the Commission to allow all qualified entities the chance to enter the auction process to bid for all categories of PCS licenses, including cellular-affiliated entities that at present would be barred from ultimately holding PCS licenses in certain markets by virtue of the Commission's eligibility and attribution rules. Bell Atlantic intends to argue vigorously on reconsideration that the Commission's PCS rules themselves lack logic, consistency or wisdom with respect to cellular eligibility restrictions and attribution thresholds. Nevertheless, assuming that such rules are in place, there is no sound policy justification to exclude any qualified participant from the auction process ex ante. It is overwhelmingly in the public interest for the Commission to allow all qualified entities to bid for PCS licenses, provided that they pledge to bring their systems into compliance with the PCS service rules within a specified time frame. This will benefit consumers by allowing all firms the opportunity to realize the possibility of PCS, and will ultimately ensure the most efficient allocation of PCS licenses.

In formulating its recommendations and strategy with respect to auction design issues, Bell Atlantic has retained Professor Barry Nalebuff of the Yale School of Organization and Management, an expert in auctions, strategic thinking and the application of game theory, and Professor Jeremy Bulow, a Stanford economist and noted auction theorist. Although Professor Nalebuff has written elsewhere that strategic thinking is "the art of outdoing the adversary, knowing that the adversary is trying to do the same to you,"^{1/} his and Professor Bulow's comments, "Designing the PCS Auction," are devoted to discussing ways that the Commission can minimize strategic behavior in the PCS auctions, by simplifying the Commission's proposed auction design as well as offering specific suggestions and modifications of other discrete aspects of the auctions that should ultimately work to the benefit of auction participants and ultimately, PCS consumers.

^{1/} Avinash K. Dixit and Barry J. Nalebuff, Thinking Strategically: the Competitive Edge in Business, Politics, and Everyday Life ix (Norton 1991).

Along these lines, Bell Atlantic has submitted a number of suggestions for simplifying the Commission's auction design. In order to simplify the auction process, Bell Atlantic believes that the Commission's objectives can be accomplished by limiting the total number of PCS auctions to four. The Commission should have one auction for the two 30 MHz licenses, one auction for three of the 10 MHz licensees, and two auctions for each of the remaining 20 MHz and 10 MHz licenses set aside for bidders representing small businesses, rural telephone companies and minority and female-owned businesses, the so-called "designated entities."

Moreover, with respect to designated entity participation in PCS, Bell Atlantic continues to believe strongly that the goal of long-term designated entity participation in PCS can be most effectively achieved by actively encouraging the partnering of such entities with consortiums that include experienced wireless and wired telecommunications providers. To the extent that the Commission's eligibility restrictions and attribution thresholds discourage or preclude such arrangements by barring cellular-affiliated companies from forming or participating in such consortiums, the Commission should waive current cellular attribution or eligibility restrictions on holding PCS licenses for the specific purpose of promoting the formation and entry into the bidding process of consortiums that include designated entity groups as meaningful equity partners.

Bell Atlantic also offers comments on the subject of auction safeguards, and specifically proposes ways that the Commission can minimize collusive or manipulative bidding in running the auctions, including a variation on the open English auction (the "Japanese" auction) that will bring other benefits and efficiencies to the PCS auction process.

Finally, Bell Atlantic supports the Commission's decision to resolve via auctions a large number of mutually exclusive unserved area applications filed prior to July 26, 1993. Bell Atlantic recommends that the Commission adopt an open auction as the specific mechanism to choose among these applications, and also recommends that the Commission allow full market settlements in the markets at issue pending the decision of auctions or lotteries.

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COMMENTS OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

Bell Atlantic Personal Communications, Inc., on behalf of the Bell Atlantic Companies ("Bell Atlantic") and through its undersigned attorneys, hereby files the following Comments in the above-captioned matter.^{1/}

I. INTRODUCTION AND OVERVIEW

The Commission has sought comment regarding its implementation of new Section 309(j) to the Communications Act, recently added by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), which for the first time gives the Commission the express authority to employ competitive bidding procedures to choose from among two or more mutually exclusive, accepted applications for initial licenses, provided that the service is principally one in which the spectrum is used to provide service to subscribers for compensation.^{2/} Because the Budget Act expressly requires the Commission to begin licensing Personal Communications Services ("PCS") licenses by early May of 1994 (i.e.,

^{1/} These Comments are submitted by the Bell Atlantic telephone companies -- the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and the New Jersey Bell telephone Company -- as well as Bell Atlantic Mobile Systems, Inc., Bell Atlantic Paging, Inc., and Bell Atlantic Personal Communications, Inc.

^{2/} See In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding, Notice of Proposed Rule Making, PP Docket No. 93-253 (October 12, 1993) ("Auction Notice").

within 270 days of its date of enactment), the Commission has initiated this expedited proceeding not only to define the parameters of its general competitive bidding authority, but also to resolve "whether and how PCS would be the subject of competitive bidding."^{3/} Accordingly, while Bell Atlantic's comments below are intended to be useful to the Commission in considering its broad design criteria for conducting spectrum auctions for all services, Bell Atlantic has focused primarily on the implementation of the auction rules with respect to PCS in light of the very short time frames mandated in the Budget Act for implementation of competitive bidding authority and initiation of PCS licensing.^{4/}

Bell Atlantic intends to argue vigorously on reconsideration that the Commission's PCS rules lack logic, consistency or wisdom with respect to cellular eligibility restrictions and attribution thresholds. These restrictions handicap severely the ability of qualified companies or consortia to participate meaningfully in PCS,^{5/} are ill-advised, and are contrary to the express goals set forth in the Budget Act authorizing the manner in which PCS will be licensed. Barring cellular operators from holding PCS licenses in MTAs where they currently provide cellular service will retard rather than promote the deployment of PCS in those regions by severely handicapping the wireless service providers who are most

^{3/} Auction Notice at 39, ¶ 114.

^{4/} See id. at 6, ¶¶ 18-20.

^{5/} Specifically, the Commission has decided to preclude cellular carriers (and local exchange carriers or other entities with significant cellular interests) from holding PCS licenses when 10 percent or more of the population of a PCS service area (Major Trading Area ("MTA") or Basic Trading Area ("BTA")) is within the cellular system's existing coverage area. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, Gen. Docket No. 90-314, 8 FCC Rcd ____ (Sept. 23, 1993), at 45, ¶ 105 ("PCS Order"). Cellular carriers will be able to hold only one 10 MHz BTA license in service areas where there is more than a 10 percent overlap between cellular and PCS service areas. Id. at 46, ¶ 106.

capable of deploying PCS rapidly and seamlessly, and who are well positioned to make "efficient, intensive use of the electromagnetic spectrum."^{6/} Moreover, to the extent that the attribution thresholds adopted in the PCS Order further prohibit cellular-affiliated companies from bringing their expertise and capital to bear through partnering with designated entities and other diverse business interests to offer PCS through MTA or nationwide consortia, the restrictions hardly promote the dissemination of licenses to a "wide variety of applicants."^{7/} Finally, although the Commission may not base a public interest finding on the expectation of Federal revenues in licensing PCS,^{8/} it is clear that the exclusion of parties with cellular interests from offering MTA service in-region severely diminishes the "value of the public spectrum made available for commercial use."^{9/}

Nevertheless, Bell Atlantic recognizes that the task at hand is to aid the Commission in developing a sound design for the PCS auctions. In formulating its recommendations and strategy, Bell Atlantic has retained Professor Barry Nalebuff of the Yale School of Organization and Management, an expert in auctions, strategic thinking and the application of game theory, and Professor Jeremy Bulow, a noted economist and auction theorist from the Graduate School of Business at Stanford University. Although Professor Nalebuff has written elsewhere that strategic thinking is "the art of outdoing the adversary,

^{6/} See Section 309(j)(A), (B).

^{7/} See Section 309(j)(C).

^{8/} Section 309(j)(7)(A),

^{9/} Section 309(j)(D); see Congressional Budget Office, Auctioning Radio Spectrum Licenses (March 1992), at 43 ("Lower auction receipts would be expected if the FCC restricts participation in the license auction.")

knowing that the adversary is trying to do the same to you,"^{10/} his and Professor Bulow's comments here are devoted to discussing ways that the Commission can minimize strategic behavior in the PCS auctions, by simplifying the Commission's proposed auction design as well as offering specific suggestions and modifications of other discrete aspects of the auctions that should ultimately work to the benefit of auction participants and ultimately, PCS consumers.^{11/}

The following comments track the general structure of the Auction Notice. They are intended to ensure that the auction process provides a simple and efficient mechanism to allow all qualified bidders the opportunity to bring their strengths to bear in the PCS marketplace.

II. APPLICABILITY OF COMPETITIVE BIDDING TO PCS

Bell Atlantic has been an active participant at every phase of the Commission's PCS proceedings,^{12/} and from the outset has advocated the award of PCS licenses by auction if the Commission were ever granted the unambiguous congressional authority to do so.^{13/} That day has now arrived, and there can be little doubt that PCS meets the Section

^{10/} Avinash K. Dixit and Barry J. Nalebuff, Thinking Strategically: the Competitive Edge in Business, Politics, and Everyday Life ix (Norton 1991).

^{11/} The comments of Professors Nalebuff and Bulow, "Designing the PCS Auction," are submitted herewith as Attachment "A" ("Nalebuff/Bulow Paper").

^{12/} See PCS Order; First Report and Order, ET Docket No. 92-100 and Gen. Docket No. 90-314, 58 Fed. Reg. 42,681 (August 11, 1993); Notice of Proposed Rule Making and Tentative Decision, Gen. Docket No. 90-314, ET Docket No. 92-100, RM-7140, 7175, 7617, 7618, 7760, 7782, 7860, 7977, 7978, 7979, 7980, PP-35 to 40, PP-79 to 85 (released August 14, 1992) ("PCS Notice").

^{13/} See In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Comments of Bell Atlantic Personal Communications, Inc. (November 9, 1992), at 28 & n.67; Id., Attachment B (Affidavit of Alfred E. Kahn) at 2-3 (observing that auctions, if available, would be the way "to get the maximum social benefit

309(j) threshold criteria to be considered an "auctionable" service.^{14/} Indeed, the statute and its legislative history demonstrate that the auction authority is expressly intended to promote the rapid deployment of such emerging technologies as PCS. Accordingly, Bell Atlantic supports the Commission's decision to award PCS licenses via the auction process, particularly since this seems to be the specific result contemplated by Congress in building the rapid, concurrent timelines for auction rules and PCS licensing into the Budget Act.

III. ALL QUALIFIED ENTITIES SHOULD BE PERMITTED TO BID FOR ALL NON-SET-ASIDE PCS LICENSES

Section 309(j) imposes no constraints on the Commission to restrict participation of any particular class of entrants in the auction process.^{15/} With respect to

from a scarce resource like the electromagnetic spectrum").

^{14/} According to the Budget Act, in cases where mutually exclusive applications have been filed for a license or permit that involves a "use" of the spectrum covered by the new legislation, the FCC may use a system of competitive bidding to grant such a license or permit. A "use" of the spectrum to which the Commission may apply a system of competitive bidding is one for which the Commission determines that the principal use will involve, or is reasonably likely to involve, the licensee's receipt of compensation from subscribers in return for which the licensee enables those subscribers either to receive or transmit directly communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate. See Section 309(j)(1)(2); Auction Notice at 4-5, ¶¶ 11-12. The Commission has concluded that the principal use of PCS spectrum, considered as a class, is "reasonably likely" to meet these criteria. Auction Notice at 39, ¶ 116.

^{15/} The legislative history of the Budget Act confirms that competitive bidding should not "diminish the authority of the Federal Communications Commission to regulate . . . spectrum licenses." S. 1134, Finding (11) (incorporated by reference in Joint Explanatory Statement of the Conferees from H. Rep. No. 103-213).

PCS, the goals of Section 309(j)(3)^{16/} will best be served by a system of competitive bidding that allows all qualified bidders to participate in the auction process.^{17/}

At this time, many different entities and industries are vying to provide the infrastructure for PCS, and are moving forward aggressively to develop varied, innovative PCS service offerings. In order for the federal government to maximize its recovery of the value of PCS spectrum, and for the public to benefit promptly from the competitive rush to develop innovative PCS services, it is in the public interest for the Commission to create the most diverse and widest possible base of qualified bidders in the PCS auctions.

As noted above, on its own initiative and in the absence of any statutory directive, the Commission has recently implemented service rules for PCS which place ownership restrictions on the ability of entities with certain cellular interests to hold certain categories of broadband PCS licenses. Even if the Commission does not change these arbitrary and unwarranted restrictions on the ability of cellular-affiliated entities to operate pursuant to PCS licenses in-market, the Commission should not prevent cellular-affiliated entities from **bidding** for any PCS license so long as such applicants certify upon entry into the auction process that, in the event they are awarded a PCS license, they will promptly

^{16/} These benefits include: the rapid development of new technologies, products and services; the promotion of economic opportunity and competition and ensuring that new and innovative technologies are made available to the American people by avoiding excessive concentration of licenses and disseminating licenses among a wide variety of applicants; recovery for the public of a portion of the value of the public spectrum made available for commercial use; and efficient, intensive use of the electromagnetic spectrum. See Section 309(j)(3)(A)-(D); Auction Notice at 5, ¶ 12.

^{17/} See Cindy Skrzycki, Dingell: Let Markets Guide PCS Industry, The Washington Post, Sept. 22, 1993, at F2; Letter from Rep. Dingell to Chairman Quello (Sept. 21, 1993). But see Letter from Rep. Markey to Chairman Quello (Sept. 22, 1993).

bring their systems into compliance with the Commission's PCS service rules and eligibility restrictions.

Specifically, the FCC has proposed that applicants must include, on sanction of dismissal, a certificate of compliance with Sections 309(a), 308(b) and 310 of the Communications Act as well as "any other service-specific qualification rules that the Commission has adopted or might adopt for the service in question."^{18/} In this regard, a cellular-affiliated PCS applicant who wishes, for example, to submit a bid for one or multiple MTAs that it may not presently be permitted to serve by virtue of its cellular coverage there should be required at the time that its application is submitted to certify that it will bring its system into compliance with PCS ownership restrictions if it is awarded a PCS license for that region. If the applicant wins, it would be granted the PCS license conditioned on bringing itself into compliance with the PCS ownership criteria within a specified time frame measured from the time of license award.

There are several ways such an applicant could come into compliance with the eligibility restrictions. The applicant could divest itself of the offending properties, as is often done in the broadcast context.^{19/} On the other hand, if the applicant concluded that the value of the PCS licenses ultimately obtained at auction did not justify divestiture of its cellular properties, it could sell the PCS license within the specified time frame, assuming

^{18/} Auction Notice at 33, ¶¶ 98-99.

^{19/} See e.g., Fox Television Stations, Inc., 8 FCC Rcd 5341, 5345 (1993) (observing that "if a broadcast licensee acquires a daily newspaper in the same market, the [broadcast-newspaper cross-ownership] rule effectively provides for an automatic temporary waiver in that the licensee must dispose of the broadcast station within one year or by the time of its next renewal").

that the Commission adopts its proposal to make PCS licenses freely transferable.^{20/} An applicant might also be permitted to retain a non-controlling interest in the license notwithstanding the cellular eligibility restrictions if it transferred the license to a consortium with significant designated entity equity participation.^{21/}

Allowing unrestricted bidding for all PCS licenses is especially important if the Commission adopts its proposal to allow bidders to submit sealed combinatorial or "group" bids for large regional or nationwide systems. Given the promise that both LEC and cellular infrastructures hold for PCS development, it makes absolutely no sense to bar such entities (or consortia in which such entities seek to hold some equity interest) from participation in the competitive bidding process for larger MTA regions ex ante.^{22/} To the contrary, to the extent that these companies value PCS licenses highly enough to submit group bids on them knowing that they must ultimately comply with applicable Commission rules regarding in-region ownership if they win, such entities should be permitted and encouraged to pursue aggregation strategies that have a high probability of migrating these carriers' considerable expertise into the provision of broadband PCS, rather than needlessly locking them out of this new technology.^{23/}

^{20/} See Auction Notice at 28, ¶ 83.

^{21/} See infra.

^{22/} This is especially true because the pool of entities or consortiums with access to enough capital to aggregate and build out a nationwide system is likely to be limited in any event. Further winnowing this pool of bidders would in effect guarantee only MCI and a very few others the ability to efficiently aggregate regions in manner that will enable them to provide meaningful competition to AT&T/McCaw, Nextel, and other quickly-developing nationwide networks.

^{23/} Thus, to the extent that Commissioner Barrett has solicited comment on "the manner in which the attribution limits adopted in the PCS order for cellular and PCS licenses, [a]ffects the ability to bid in group licenses or as individuals," see Separate Statement of Commissioner

In sum, it would be unfair, unnecessary, and contrary to its statutory mandate for the Commission to force cellular operators into the Hobbesian choice of either foregoing full participation in PCS auctions or divesting of their cellular interests before ever knowing whether they will succeed at auction.

IV. AUCTION DESIGN

The Commission has solicited comment on the design of alternative auction methods that will promote the objectives set forth in new Section 309(j)(3) of the Communications Act and will ensure that PCS licenses wind up in the possession of entities that will value them most and exploit their full potential.

In general, Bell Atlantic supports the proposed PCS auction plan set forth in the Auction Notice. There are several ways, however, that the Commission should streamline and simplify the process even further while still accomplishing the goals set forth in Section 309(j). To this end, Bell Atlantic offers the following comments and proposals, and refers the Commission to the attached Nalebuff/Bulow Paper.

Andrew C. Barrett at 3, the answer for purposes of considering parties' initial participation in the auction process will be, if and only if Bell Atlantic's proposal is adopted, that attribution limits will have no effect at all on their ability to **bid** initially for PCS licenses, although they will have dispositive effects on whether certain consortia will ultimately be able to hold PCS licenses.

A. **Bidding**

1. Keeping the Auction Simple

The first broad design criterion that the Commission has proposed in developing rules on competitive bidding is simplicity and ease of administration.^{24/}

Unnecessary complexity in the conception or execution of any system of competitive bidding that the Commission adopts could cause delay and frustrate congressional intent to speed the deployment of new services to the public.

At present, the Commission has adopted a PCS licensing format consisting of 120 MHz of spectrum divided into seven separate spectrum blocks: two 30 MHz MTAs, one 20 MHz BTA, and four 10 MHz BTAs. From a competitive bidding standpoint, this number of potential licensees, along with conducting different auctions for each frequency block, will place heavy administrative burdens on the Commission if the PCS auction design is not simplified.

Moreover, as Professors Nalebuff and Bulow explain, even the Commission's well-conceived auction proposals will severely tax the decision-making abilities and resources of companies that are interested in participating in multiple bidding competitions.^{25/} Participation in numerous sequential oral auctions, for example, combined with the difficulty of valuing the numerous spectrum lots in seven frequency blocks (which in turn will vary in value according to the population of microwave incumbents in each block within each

^{24/} The Commission has observed that "given the very short time frame within which we are required to implement competitive bidding regulations and initiate licensing of PCS, any system that we promulgate should be simple and easy to administer." Auction Notice at 6, ¶ 18.

^{25/} See Nalebuff/Bulow Paper at 3.

region), will require companies to formulate extensive and complex contingent bidding strategies.^{26/}

2. The Commission Should Run a Total of Four Auctions

In order to simplify the auction process, Bell Atlantic believes that the Commission's objectives can be accomplished by limiting the total number of PCS auctions to four along the lines that the Nalebuff/Bulow Paper proposes.^{27/} The Commission should have one auction for the two 30 MHz licenses, one auction for three of the 10 MHz licensees, and two auctions for each of the remaining 20 MHz and 10 MHz licenses for designated entities.

a. Frequency Blocks A and B (30 MHz MTAs)

For PCS, the Commission has proposed to experiment with combinatorial bidding for the two 30 MHz spectrum blocks by: (1) accepting sealed bids for the A block as a group; (2) conducting sequential oral auctions for individual MTAs on the A block; (3) opening the sealed bids and awarding to the winning sealed bid if that nationwide bid is higher than the total individual MTA bids; and (4) repeating this process for the B block MTA licenses.

Bell Atlantic proposes that the Commission refine and simplify this process in the following manner: Parties would submit a national sealed bid, and the Commission would then conduct one open sequential auction for all of the 30 MHz MTA licenses on an MTA-by-MTA basis (both A block and B block). For each MTA, the top two bidders would be identified. The Commission would then unseal and evaluate the bids to see whether the

^{26/} Id. at 3-4.

^{27/} Id. at 4.

national bids would gain more revenue than the sum of the regional bids. One national license would be awarded if the highest national bid exceeded the sum of the second-highest regional bids. Two national licenses would be awarded if both national bids exceeded the sum of the highest regional bids. If the highest national bid is lower than both the sum of the highest regional bids and the sum of the second-highest regional bids, then two regional PCS licenses would be awarded in each MTA, with the higher of the two bidders in each region getting first choice of either the A or B Block.^{28/}

As the Nalebuff/Bulow Paper explains, this proposal has the benefit of obtaining the same revenue result as the sequential auctions that the Commission has proposed, but also adds the following advantages:

- (1) A simpler auction design allows companies to focus their attention on more important decisional elements in the auction;
- (2) Firms entering the auction are able to conserve decision-making and valuation resources;
- (3) The proposal helps prevent inefficient outcomes by reducing the necessity of strategic bidding for two auctions;
- (4) The proposal decreases the Commission's administrative burden.^{29/}

^{28/} See Nalebuff/Bulow Paper at 4-7. If a national bidder exceeded the sum of the highest regional bidders, but the sum of the second-highest regional bidders exceeded the next highest national bid (yielding one national and one regional license), the national bidder would be permitted to choose either the A or the B block for its PCS system. Similarly, if a national bidder exceeded the sum of the second-highest regional bids, but not the sum of the highest regional bids (also yielding one national and one regional license), the top regional bidder in each MTA would be permitted to choose its preferred MTA frequency block (A or B), with the national bidder receiving the other. Note that the above scenarios assume that the A and B MTA blocks are largely fungible because it appears that they can be made technically compatible with little difficulty for those bidders who are attempting to bid for multiple MTAs to create a large regional or nationwide system. If it ultimately proves to be important for bidders to win a particular block within MTAs, they will simply make certain that their bids are the winning bids.

^{29/} Id.

b. Frequency Blocks E, F, and G (10 MHz BTAs)

For these 10 MHz bandwidths, one open auction would be held with bidding proceeding sequentially for each BTA. The top three bidders for a particular BTA would each be awarded a license, with the highest bidders getting first choice.

In addition, Bell Atlantic supports group bidding for BTA licenses such that firms could aggregate them on either an MTA or a nationwide basis. The bidding would operate analogously the process proposed for the 30 MHz sealed bids above. Where the three 10 MHz licenses are subject to the same auction, the MTA bid would win if the sum of the lowest winning BTA bids is exceeded by the regional bid. Similarly, a national bid would trump a combination of regional and BTA bids if it were higher still. A firm could also bid for 20 MHz of this spectrum, which would be the equivalent of requiring that it have two winning 10 MHz bids.^{30/}

3. No Minimum Bid Requirements

The Commission has tentatively decided against setting a "reservation" price in the auction below which a license will not be awarded, reasoning that it will be difficult and time consuming to estimate the value of licenses for this purpose, and that developing and implementing a procedure to calculate such an estimate in establishing a minimum bid unnecessarily adds to the burdens on the Commission as it works to hold the earliest possible PCS auctions in keeping with the statutory timetable.^{31/} Bell Atlantic agrees with these conclusions. Moreover, as the Auction Notice suggests, because competition in the PCS

^{30/} Id. at 13.

^{31/} Auction Notice at 21, ¶ 67; see Evan Kwerel and Alex D. Felker, "Using Auctions to Select FCC Licensees," OPP working Paper No. 16 (May 1985), at 26.

auctions is likely to be fierce, the benefits of setting a reservation price are severally attenuated, and simply do not justify the administrative effort necessary to determine accurately what that reservation price should be or how it would be calculated.^{32/}

4. Combinatorial Bidding

Bell Atlantic supports the Commission's general concept of using a sealed combinatorial or "group" bid for MTA licenses, followed by an open auction and subsequent unsealing of the group bids to determine whether the value of the MTA licenses is better maximized individually or as part of an aggregate "national" bid. Combinatorial bidding will allow the PCS market directly and fully to express the interdependence of license values, and if desirable, to aggregate licenses to achieve their highest valued use.

B. **Treatment of Designated Entities**

The new Section 309(j)(3) of the Communications Act directs the Commission in designing a system of competitive bidding to promote economic opportunity and competition, in part by ensuring that licenses are disseminated among a "wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."^{33/} The statute requires the Commission, in promulgating regulations to achieve this objective, to ensure that these designated entities are "given the opportunity to participate in the provision of spectrum-based services."^{34/}

The Commission has proposed to reserve one 20 MHz (Block C) and one 10 MHz block (Block D) for bidders representing small businesses, rural telephone companies

^{32/} See Auction Notice at 21, ¶ 67.

^{33/} Section 309(j)(3)(C).

^{34/} Section 309(j)(4)(D).

and minority and female-owned businesses. Conducting separate auctions for each of these blocks would a sensible way to administer the set-asides given the technically significant differences in the frequencies of each block.^{35/} Moreover, to the extent that the Auction Notice has raised (and Bell Atlantic shares) legal/constitutional concerns surrounding the viability of the set-asides for designated entities,^{36/} running these auctions separately could help minimize the possibility that any legal challenges or defects will affect the process of auctioning the other PCS licenses (in which designated entities will also be participating, either individually or partnered in some fashion with bidding consortia).

Bell Atlantic urges the Commission to adopt other measures to encourage and promote the participation of designated entities in the auction process. Such measures include installment payment plans with interest for the set-aside blocks, as well as the use of microwave, SSBIC and minority tax certificates in the manner proposed by the Commission's Small Business Advisory Committee ("SBAC").^{37/}

Bell Atlantic continues to believe strongly that the goal of long-term designated entity participation in PCS can be most effectively achieved by actively encouraging the partnering of such entities with consortia that include experienced wireless and wired telecommunications providers. Benefits of such affiliation include: (1) exposure to technical and market experience; (2) the receipt of training and assistance in the areas of business

^{35/} The 20 MHz allocation is paired in the "lower" band at 1880-1890/1960-1970 MHz, while the proposed 10 MHz is paired in the "upper" band 2130-2135/2180-2185 MHz.

^{36/} See Auction Notice at 22-23, ¶¶ 72-74; see also PCS order, Dissenting Statement of Commissioner Andrew C. Barrett at 4 ("[S]et-asides for small businesses may or may not be contemplated by Public Law 103-66, and will require further, significant debate on the record at the FCC before they can be established. I do not expect that this debate will occur without controversy.").

^{37/} See PCS Order, Appendix C, SBAC Report at 18-19.

management, technical development and capital formation; and (3) increased access to capital markets.^{38/} Indeed, as the Commission's Office of Plans and Policy found:

[A]n independent firm -- an entrepreneur or small company that obtains a PCS license but does not own any existing infrastructure in the subscriber loop -- probably would not choose to construct a stand-alone PCS network. Results indicate the fixed costs of a PCS network using microcells are high in relation to the fixed costs of providing PCS using existing infrastructure. This cost differential is especially dramatic at the low levels of penetration which are to be expected during the first few years of deployment. Instead, the independent provider is likely to pursue a strategy of negotiating alliances or commercial relationships among the infrastructure alternatives available to deliver PCS.^{39/}

To the extent that the PCS attribution rules have significantly restricted or limited the participation of cellular companies or cellular-affiliated LECs to form or participate in consortia that will hold PCS licenses for large regions, the participatory benefits afforded to designated entities and smaller entrepreneurs have been extremely and unnecessarily diminished by the Commission in promulgating its service rules for PCS.

Although Bell Atlantic believes that both cellular eligibility issues and attribution thresholds for holding PCS licenses are appropriately revisited directly and comprehensively by the Commission in the process of reconsidering the PCS Order, the Commission should consider here the benefits of waiving current attribution or eligibility restrictions on holding PCS licenses for the specific purpose of promoting the formation and entry into the bidding process of consortia that include designated entity groups as

^{38/} See also PCS Order, Dissenting Statement of Commissioner Andrew C. Barrett at 4 (expressing belief that under current PCS allocation scheme, "small businesses would have a better chance of surviving in an MTA consortia, than if they are licensed to compete solely as a single, standalone BTA inside an MTA").

^{39/} David P. Reed, Putting It All Together: The Cost Structure of Personal Communications Services, OPP Working Paper Series No. 28 (November 10, 1992) ("OPP Study"), at 44.

meaningful equity partners.^{40/} Specifically, cellular or cellular-controlled entities who might otherwise be rendered ineligible for holding PCS licenses in-region should nevertheless be allowed to hold and operate such PCS licenses^{41/} to the extent that they do so as non-controlling members of PCS consortia in which designated entities hold significant equity interests.^{42/}

C. Auction Safeguards

1. Unjust Enrichment

Although Section 309(j) requires the Commission to impose "such transfer disclosures and antitrafficking requirements as may be necessary to prevent unjust enrichment,"^{43/} this concern is greatly reduced in the auction (as opposed to the lottery) context. As noted in the legislative history to the Budget Act, in a system of open competitive bidding, "trafficking in licenses should be minimal, since the winning bidder will

^{40/} In order to guard against the formation of sham consortia, the Commission should rigorously examine the extent of equity ownership of and participation in such consortia by designated entities.

^{41/} Note that although (as argued supra) all entities should be permitted to bid for all non-set-aside PCS licenses, including MTA licenses, the entry costs into the auction for these licenses are still extraordinarily high for MTA regions in which cellular companies are excluded from holding PCS licenses. Even if a cellular company wins a PCS MTA license, it will be required under the current PCS rules to either divest itself of its cellular properties or, if it is simply uneconomic to retain it, sell the license. To the extent that cellular companies and other telecommunications players with significant cellular interests are deemed to offer significant and real opportunities for designated entity participation in PCS, an eligibility waiver would promote much more active participation by these entities in the MTA auctions. In this case, the opportunities for increased designated entity participation in PCS should be deemed to outweigh the anticompetitive fears that evidently underlie the current PCS eligibility and attribution restrictions, even if those rules are ultimately retained.

^{42/} See also PCS Order, Dissenting Statement of Commissioner Andrew C. Barrett at 4 (expressing support for in-market cellular interests if required "to include small businesses, rural telcos, minorities and women in order to operate an MTA license").

^{43/} Section 309(j)(4)(E).

have paid a market price for the license."^{44/} In an unlimited bidding process, resale of the license will involve no unjust enrichment. Accordingly, there is no reason to impose any restrictions on the subsequent transferability of PCS licenses.

The one exception may be the proposed set-asides for designated entities. Restricting bidder participation to certain designated groups creates a risk that the auction will not realize the full market value of the licenses, and that auction winners would be able to "flip" their licenses for a profit in the aftermarket instead of building out and operating PCS systems in the manner that Congress intended. The potential disparity between auction prices and market value could also create incentives to those uninterested in developing PCS to attempt to manipulate the auction prices for speculative reasons. To address this possibility, the Commission proposes imposing upon designated entities a system of financial disincentives or early transfer restrictions if set-asides are adopted.^{45/}

Such restrictions, while preventing designated entities from realizing speculative gain on their PCS licenses, could compound the difficulties they already experience in attracting capital. To mute this possibility, the Commission should permit the transfer of PCS licenses among all designated entities so that "set-aside" PCS licenses will remain in the hands of those whose interest Congress has sought to promote. This would be a way to adequately safeguard against trafficking while permitting the designated entities some flexibility in obtaining financing.

^{44/} H.R. Rep. No. 103-111 at 257; see Auction Notice at 28, ¶ 83.

^{45/} Auction Notice at 29, ¶¶ 84-85.

2. Performance Requirements

With respect to performance requirements for PCS, the Commission has already specified a timetable for PCS licenseholders to "build out" their systems and serve increasing numbers of customers.^{46/} As long as the auctions result in license sales at prices that are comparable to fair market value, and the Commission permits parties to transfer PCS licenses freely after they are awarded, it is unlikely that firms will have much incentive to stockpile them. Moreover, as the Commission points out, the out-of-pocket expenditure by a firm in an auction renders explicit to would-be "warehousers" the cost of stockpiling a PCS license.^{47/} Bell Atlantic agrees that increased awareness of this potentially significant cost that would be incurred as a result of acquiring but not exploiting the PCS license's value could be an effective deterrent to such behavior.

3. Anti-Collusion Rules and Experimental Auction Design

To the extent that many of the Commission's proposals involve the use of open auctions, the Commission has also recognized that this system of bidding "may be more subject to manipulation and collusion."^{48/} The Commission therefore has requested comment on ways in which it can prevent such behavior.

As the Nalebuff/Bulow Paper observes, the susceptibility of open English auctions to manipulative bidding allows a bidding ring to rapidly escalate bids with the initial winner intentionally defaulting in favor of a bidding partner who places the second highest,

^{46/} See PCS Order at 54-55.

^{47/} Auction Notice at 30, ¶ 91.

^{48/} Id. at 14, ¶ 38.

but artificially low bid.^{49/} For example, if Bidder 1 offers one million dollars and then Bidder 2 offers 50 million dollars, those who might have submitted bids falling in the interval between those of Bidder 1 and Bidder 2 are never given the opportunity to do so. In the face of Bidder 1's default, the Commission has suggested that it would re-run the auction,^{50/} which would be an extremely undesirable and costly result.^{51/}

There are several ways in which the Commission can prevent the escalation and default scenario in an open auction. First, the Commission could accept "losing" bids after the auction ends. In the event that an artificially inflated winner forfeits, the Commission can then award the license to the next highest bidder, taking into account all of the bids made during the auction as well as the backup bids. This effectively prevents the necessity of having to re-run the auction because collusion can no longer create an artificially low losing bid -- other bidders will have been given the opportunity to "fill in" the interval.^{52/}

A second solution to this problem is to allow no wild "jumps" in bidding by mandating that bidders not be allowed to increase their bids beyond certain pre-specified units (i.e., bidders can only raise their bids by \$200,000 increments). This, too, would prevent a party from preemptive bidding.^{53/}

^{49/} See Nalebuff/Bulow Paper at 10.

^{50/} See Auction Notice at 38-39, ¶ 113.

^{51/} Nalebuff/Bulow Paper at 10.

^{52/} Id. at 11. Professors Nalebuff and Bulow observe that this is a desirable safeguard because the Commission will likely never have to use it once bidders have been apprised that the mechanism is in place. Id. at n.11.

^{53/} Id.